DOCUMENT RESUME

ED 246 550 EA 017 010

AUTHOR Akers, James T.
TITLE Good Policy Tips for Public Use of School Facilities.
PUB DATE 84
NOTE 12p.; Paper presented at the Annual Meeting of the National School Boards Association (Houston, TX, March 31-April 3, 1984).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (120) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Ancillary School Services; *Board of Education Policy; Community Centers; Community Organizations; *Community Services; *Educational Facilities; Elementary Secondary Education; Group Activities; School Community Relationship; School Law; *Shared Facilities; *Space Utilization
IDENTIFIERS Emporia Public Schools KS; Kansas

ABSTRACT

Although many school boards' policies on public use of school district facilities are deliberately vague and allow administrators great flexibility in their interpretation, this paper advocates well-defined regulations. It presents a sample policy, discusses legal concerns, and suggests essential provisions of facility-use policy. The policy summarized is that of the Emporia, Kansas, public schools; it prescribes procedures for gaining access to facilities, places conditions on their use, assigns responsibility for human and property safety, regulates services available to community users, and provides for rental fees. The legal issues discussed include school boards' discretion over building use, and the use of buildings for political and religious activities. Finally, the author proposes 10 issues a facility-use policy should address. (MCG)

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1984 NSBA Convention-Houston, Texas, March 31 - April 3
Clinic No. D-62 Speaker: Akers (Kansas)

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GOOD POLICY TIPS FOR PUBLIC USE OF SCHOOL FACILITIES

JAMES T. AKERS

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School administrators and school boards often receive requests from groups and individuals outside the school community to use school facilities for non-educational purposes. These requests are a natural outgrowth of the local public's desire to utilize the convenient, well-equipped and costly buildings which they have supported with tax funds, to the maximum possible.

In 1968, the National School Boards Association, acting through their Delegate Assembly, issued the following statement of beliefs regarding this matter:

> "Public school facilities should be used as community centers for the integration of the American community and the encouragement of family participation in wholesome character building activities conducive to good citizenship. The Association should urge state associations to initiate legislation whenever necessary to authorize the wider use of public school facilities for community purposes under provisions giving local boards authority to determine, regulate, and maintain such programs."[1]

In concert with this expression by the NSBA and indeed, long before it, most local boards of education have enacted policies, regulations and guidelines which speak to this issue within applicable state laws and their own internal philosophies. These policies vary widely in content and detail. Some samples are cited below:

> "In order to assure a close relationship between the school and the community, it shall be the policy of the Board to grant and encourage

[1] Statement of Beliefs and Policies of the Delegate Assembly, National School Boards Association, Washington, D. C., 1968.

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maximum use of school facilities to responsible and properly organized Wayne Community School District Groups for the purpose of education, recreation, and entertainment.

The authorized representative of the Board may approve the use of school facilities by nonschool organizations except for those activities which result in personal or corporate gain. Charges shall be made according to the schedule of fees approved by the Board. The Superintendent shall establish such rules and regulations as needed to implement this policy as well as to assure the preservation of school district property."[2]

"School facilities shall be used as community centers for the integration of the American community and the encouragement of family participation in wholesome, character-building activities conducive to good citizenship. Such use shall be scheduled so as not to interfere with the regular instructional program of the district."[3]

These statements are representative of the broad policy position many school boards assume on the community use of school facilities, leaving the implementation of policy to the administration.

A more detailed statement which might be published by a school district is contained in the following, extracted from the school board policies of the Emporia, Kansas public schools:

Use of School Facilities

It is the policy of the board to grant and encourage maximum use of school facilities by responsible individuals and properly organized groups throughout the

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[2]Wayne Community School District, Wayne, Michigan. 12-14-64.

[3]Santa Clara Unified School District, Santa Clara, California. Revised 02-27-69.

district so long as these activities do not interfere with the regular school program.

The building principal or designated representative is responsible for the collection of the fee to the supervisor of budgets and accounts.

The use of school facilities is subject to the following provisions. Full compliance is expected whether the use of the facility is on a cost or noncost basis.

The fees are established annually and are to help defray costs. The fees are on file in each administrator's office.

The use of the facility shall be subject to the written regulations of this rule and the School Facility Use Permit (Form 600).

The schools shall have first priority in the use of school facilities.

The board may, at any time it thinks best, refuse to open or grant access to any and all school facilities for any and all purposes.

The use of the buildings must be confined to that stated in the written grant of permission to use.

Unless permission is granted specifically to use the facility until a later time, the facility must be vacated by 10:00 p.m.

The person or persons signing the agreement for use of the building shall be responsible for all persons entering the part of the building which they are using regardless of whether or not all those entering are members of the group which has been permitted to use the building. Only the specific section of the facility mentioned on the agreement is to be used by the group.

Smoking, alcoholic beverages, and disorderly conduct shall be prohibited in any school building.

Organizations using the buildings and facilities must be supervised by an adequate number of adult sponsors to assure proper care and use of school property.

Moving and securing scenery, securing lighting, operating public address systems, and similar matters will be accomplished under the direction of an employee of the board. All services must be outlined on this permit.

The person, persons, or groups making application for facilities use shall agree to reimburse the district for any property damage done to school facilities by persons of the group participating.

There may be additional written or stated guidelines issues to regulate facility utilization.

The swimming pool shall not be used unless an approved lifeguard is on duty.

Approved community non-profit child benefits groups serving the children of the district are exempt from paying fees if the use of the facility does not cause additional expenses to the district. Ordinarily, these groups will not be allowed the use of these facilities more than once a month free of charge.

In the event any of these groups desire use of the facility more than once a month, the charge shall be according to the regular fee schedule.

The Emporia Recreation Commission shall enjoy a 50% reduction in certain rental fees.[4]

It is well-settled law that school buildings may be used for educationally related activities, such as extra-curricular activities and adult education programs. Uncertainty sometimes arises, however, when the activities to be held in school

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[4]Board of Education, USD No. 253, Emporia, Kansas. 01-24-84.

buildings are not educational in nature, or the motives of the sponsors are unclear.

The courts have been showing a tendency to widen non-educational usage of school buildings, but this area of the law is far from settled. Boards of Education and administrators faced with a decision whether to permit use of local school facilities come face to face with the law, and should be aware of the cases related to school building use within their own states.

Ordinarily, the principle of law followed by the courts is this: the board may choose to close the door to all outsider use of public school buildings, but if it opens the door to permit use by any groups, it must treat all organizations alike in the same category.

An example of the wide, discretionary power granted to local boards of education when dealing with public use of school facilities may be found in the following extracts from the Statues of Kansas, the writer's own state:

> KSA-72-1033: "Control of School Property-Library Services": "The school board may open the school house for public purposes, under such rules and regulations as the board shall adopt."[5]
>
> KSA-72-8212: "Powers and Duties of Boards of Education": "The board may open any and all school buildings for community purposes, and may adopt rules and regulations governing such use of school buildings."[6]

It is obvious that within these general, permissive statements in law, local school boards who formulate policy in this area must be well-informed regarding case law, state legislative amendments, state Attorney General opinions, and U.S. Supreme Court decisions. Only with all available such data at hand are boards in

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[5]Kansas Statues Annotated: (72-1033) 1983.

[6]Kansas Statues Annotated: (72-8212) 1983.

a sound position to develop and implement supportable policy.

The diverse nature of the requests now being seen where permission is sought to use school buildings adds to the dilemma. Boards and administrators are also confronted by ambiguity relating to the rights of allegedly objectionable or subversive speakers to use school facilities.

A Florida Court held that a college, university or public school authority in the state could adopt rules denying an invitation to a speaker if it reasonably appeared that such a group or speaker would, in the course of using the building, advocate or attempt: (1) violent overthrow of the federal or state government or any political subdivision; (2) destruction or seizure of the institution's property; (3) disruption or impairment by force of classes or other educational functions; (4) invasion of the rights of officials, faculty members or students; or (5) other disorder of a violent nature.[7] While this may appear extreme, board members and administrators must remember that the primary usage for which a school building is intended is the accomodation of the regular school program. Outside groups or individuals, therefore, use the premises within constraints related to the primary purpose.

Even though groups or individuals do not possess a constitutional right to use school facilities, boards may not deny their use wholly on some impermissable grounds, such as race, color, sex or economic status.[8] Nor may boards allow the use of school facilities for entertainment that is discriminatory because of race.[9]

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[7] Lieberman vs. Marshall, 236 S 2nd 120. (Florida 1970)

[8] Graves vs. Walton Co. Board of Education, 300 F. Supp. 188, Affirmed, 410 F. 2nd 1152 and 410 F. 2nd 1153. (Georgia 1968)

[9] Monroe vs. Board of Commissioner, City of Jackson, 380 F. 2nd 955. (Tennessee 1967)

The school board has the legal right and duty to protect its property or educational processes from any disturbance or interference. However, this obligation must be balanced against the right of the public to enter the premises for lawful and legitimate purposes.[10]

Finally, case law in recent years recognizes the fact that while school properties are "public" in the sense that they are endowed and operated with taxpayers' money, they are not "public" in the sense that any member of the general public may, when and if one pleases, use such properties for personal objectives or the dissemination of one's own personal views. Accordingly, the uses to which such properties may be put by members of the public, otherwise unaffiliated with the school operation, are properly subject to reasonable regulation and prescription.[11]

Thus far in this paper, the writer has reviewed certain legalities involved in the public use of school facilities. Consideration shall now be given to the practical application of this background data in the school-community arena:

From the standpoint alone of exercising good management over physical plant resources, boards of education should insure that a well-written, legally sound, defensible policy regarding the use of school facilities is included in every district policy manual. This policy should be reviewed periodically and updated when necessary. Comprehensive policy with detailed guidelines regarding conditions for usage of facilities, fees, and responsibilities of user groups will create better understanding by the public as to how the school's facilities are being managed and utilized. In addition, public relations will be enhanced and bonds of school-community cooperation will be strengthened.

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[10] State vs. Besson, 266 A. 2nd 175. (New Jersey 1970)

[11] State vs. Oyen 480 P. 2nd. (Washington 1971)

A significant policy area which has caused confusion in recent years and which should be addressed by every school board has to do with the question of leasing school buildings to religious organizations. In Kansas, this issue was addressed in 1982 by the State Attorney General. The problem arose when a local board of education refused, under its policy, the request of a religious organization to rent a school building for the purpose of conducting worship services during non-instructional hours. The board had steadfastly denied use of school facilities to all religious groups while permitting usage by various other organizations. In this case, the Attorney General ruled as follows:

> "If a board of education permits school buildings of the district to be leased by numerous nonschool related groups and organizations when those buildings are not in use for school purposes, the board has created a forum generally open for use by such groups and organizations. Having created this open forum, the board cannot exclude a group or organization on the basis of the religious content of the group's intended speech. Such an exclusion is not justified as maintaining separation of church and state under the Establishment Clause of the First Amendment to the United States Constitution. Cited herein: K.S.A. 72-6212, U.S. Constitution, Amendment I."[12]

The above example is cited to support the advisability, when writing policy regarding use of school facilities, of obtaining the most current legal position in a given state regarding this matter. Only with all applicable data at hand is the board prepared to draft definitive policy.

In preparing statements of policy in the area under discussion, school boards have at their disposal the expertise of the policy services offered by the National

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[12] Stephan, Robert T., Attorney General of Kansas, Opinion No. 82-51, 02-26-82, Topeka, Kansas.

School Boards Association as well as those of the various state associations. These organizations offer well-written legal guidelines and policy statements which may be adapted to the needs of local school districts and communities. Every board is strongly advised to seek the resources of these organizations inasmuch as the data will be the most comprehensive and effective in this policy area.

Several important general elements should be contained in every policy regarding public use of school facilities. A general statement of the Board's philosophy and attitude is a positive beginning. Subsequent sections should provide detailed guidelines in the following areas:

1. Types of community and/or outside organizations which will be permitted use of school facilities.
2. District facilities which are to be made available and their locations.
3. General times and periods during the year when facilities may be used by public groups.
4. Individual staff members responsible for granting use of facilities as well as procedures for engaging facility usage.
5. Special conditions and responsibilities of user groups when conducting events on public property.
6. A schedule of fees and/or special charges made by the school district for use of facilities to include profit and non-profit groups.
7. Provisions for a short, written agreement or contract containing the terms and conditions entered into by the user group and the board of education for each public usage of the facilities.
8. A statement regarding liability of user groups for damage to school property beyond fair wear and tear.
9. A statement regarding responsibility for adequate supervision and security of groups utilizing school facilities.
10. A statement regarding use of school facilities by religious groups or organizations which is consistant with state law on the subject.

The above model may be modified or expanded upon as required by unique circumstances in a given district. It is vital, however, that the general areas cited

be treated to a certain extent in any sound policy.

Once completed, the board's policy regarding public usage of school facilities should be made known at all levels of the system and community. The policy should be adhered to by all responsible for its implementation. It should be consistently applied to all applicants seeking to use the schools for non-educational activities.

In summary, a well-developed policy on this issue will enable a local board of education to effectively discharge its prime responsibility to the student clientele by insuring that the school's buildings and equipment are available on first priority for the discharge of the educational mission without undue impediment. In addition, the role of the school as an adjunct to activities of the community will be enhanced. Sound policy will insure an orderly process whereby the citizen who support public schools with tax dollars may gain legitimate access to these valuable community assets.

In a society where school-community relations assume increasing importance, school boards implementing a responsible policy for sharing use of schools will be fulfilling public expectations while enhancing their image as agents of trust for the public's property.

The foregoing treatment regarding this vital issue is respectfully dedicated to boards of education to assist in attainment of this goal.

REFERENCES

1. Statement of Beliefs and Policies of the Delegate Assembly, National School Boards Association, Washington, D. C., 1968.

2. Policy Statement: Wayne Community School District, Wayne, Michigan, 14 December 1964.

3. Policy Statement: Santa Clara Unified School District, Santa Clara, California, 27 February 1969.

4. Policy Statement: Unified School District No. 253, Emporia, Kansas, 24 January 1984.

5. Kansas Statutes Annotated, Office of the Secretary of State of Kansas, Topeka, Kansas, 1983.

6. Ibid.

7. Lieberman vs. Marshall: cited in "Duties and Liabilities of School Administrators", Nolte, Chester M., Parker Publishing Co., West Nyack, New York, 1973 p. 92.

8. Graves vs. Walton Co. Board of Education: Ibid, p. 93.

9. Monroe vs. Board of Commissioners, City of Jackson: Ibid.

10. State vs. Besson: Ibid.

11. State vs. Oyen: Ibid, p. 96.

12. Stephan, Robert T., Attorney General of Kansas, Opinion No. 82-51, Topeka, Kansas, 26 February 1982.